

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1081 OF 2015**

DISTRICT : PUNE

Mrs. Surekha Bhaskar Tambat,)
Age 34 years, working as Police-Patil of)
Village Kanjale, Tal. Bhore, District Pune)
R/o as above.)..Applicant

Versus

1. The Sub Divisional Magistrate,)
Bhore, Sub-Division Bhore, District Pune)
2. The State of Maharashtra,)
Through Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)
3. The State of Maharashtra,)
Through Addl. Chief Secretary (Revenue),)
Revenue and Forest Department,)
Mantralaya, Mumbai 400032)

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4. The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 4th May, 2016

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant challenging the order dated 8.10.2015 issued by the Respondent No.1 refusing to renew the appointment of the Applicant as Police-Patil in village Kanjle, Taluka Bhore, District Pune.

3. Learned counsel for the Applicant argued that the Applicant was appointed as Police-Patil of Village Kanjle by the Respondent No.1 from 1.8.2009 for a period of 5 years. This

was done pursuant to a declaration for filling posts of Police-Patil in Bhore Taluka issued on 20.12.2008. The post at Kanjle was reserved for Open-Women Category. In the declaration, there was no condition that a candidate should have a small family as per the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005. In the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Services) Order, 1968, issued in exercise of powers under subsection (3) of Section 5 of the Maharashtra Village Police Act, 1967, there is no provision in Rule 3 regarding Small Family. Learned Counsel for the Applicant argued that Rule 4 makes it clear that the appointment of Police-Patil is for a period of 5 years and he can be removed from service by the competent authority after recording reasons for doing so in writing on certain grounds, after giving the incumbent an opportunity to make a representation. Police-Patil is not covered by Article 311 of the Constitution of India. Learned Counsel for the Applicant stated that under Rule 7, a Police-Patil is not paid salary, but honorarium and under Rule 8, he is allowed to do private business, unlike a regular Government servant. Though Rule 12 provides that Maharashtra Civil Services Rules can be applied to Police-Patil, but orders from State Government in writing are required. Rule 13 makes it very clear that Police-Patils are not eligible to any benefits or concessions or rights as admissible to full time permanent Government Servants. Learned Counsel for the Applicant



argued that even the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 are applicable only to Group 'A', 'B', 'C' and 'D' posts in Government. As the post of Police-Patil is not included in any of these categories, these rules cannot be made applicable to Police-Patil. Learned Counsel for the Applicant also referred to Rule 2 of the MCS (Conduct) Rules, 1979 which defines Group 'A', 'B', 'C' and 'D' posts. Similar provision is there in MCS (Upper Age Limit for Recruitment by Nomination) Rules, 1986. Learned Counsel for the Applicant argued that in para 6.13 of the OA, this issue has been raised by the Applicant. In para 10 of the affidavit in reply of the Respondent No.1 dated 15.2.2016 there is no specific denial to these averments.


4. Learned Presenting Officer (PO) argued on behalf of the Respondents that Rule 12 of the 1968 Order, makes a specific provision that Bombay Civil Services Rules can be made applicable to Police-Patil, if not inconsistent with the Act or rules made thereunder. He contended that the State Government by order dated 14.9.2011 has made Small Family Rules applicable to Police-Patils. Learned PO argued that MCS (Declaration of Small Family) Rules, 2005 are no doubt applicable to Group 'A', 'B', 'C' and 'D' Government servants and the post of Police-Patil does not come under any of these categories. However, in view of Rule 12 of 1968 Order, the State Government can make these rules applicable to Police-Patil. Even under Rule 2(c) of MCS (Declaration of Small

Family), Rules, 2005, 'service' is defined as Civil Service or any other service under Government of Maharashtra. The service of Police-Patil will be covered by 'any other service under Government of Maharashtra'.

5. It is true that the post of Police-Patil is not a regular, full time or permanent post under the State Govt. Rule 13 of the 1968 Order itself recognizes this fact. Obviously, the post of Police-Patil is not a Group 'A', 'B', 'C' or 'D' post. The question is whether MCS (Declaration of Small Family) Rules, 2005 can be made applicable to the post of Police-Patil. Rule 12 of the 1968 Order reads:

"12. Application of Bombay Civil Services Rules etc.-
The State Government may, by an order in writing, apply to Police-Patils such of the provisions of the Bombay Civil Services Rules or the Bombay Civil Services (Conduct, Discipline and Appeal) Rules, as are not inconsistent with the Act and the Rules made thereunder."

6. It is undisputed that Bombay Civil Services Rules have been replaced by various Maharashtra Civil Services Rules. MCS (Declaration of Small Family) Rules, 2005 are also part of Maharashtra Civil Services Rules. State Govt. has powers to apply these rules to Police-Patil by an order in



writing. Learned Counsel for the Applicant has stated that order dated 14.11.2011 from the Govt. in Home Department is only a letter to all Collectors except Collector of Mumbai City and Mumbai Suburban District. In any case, as MCS Rules are promulgated by the General Administration Department, order making MCS (Declaration of Small Family) Rules, 2005, applicable to Police-Patil should have been issued by that Department. This objection appears to be of hyper technical nature. The order dated 14.9.2011 is in writing and it clearly mentions that MCS (Declaration of Small Family) Rules are applicable to Police-Patil which is covered by "any other service under the Government of Maharashtra" as provided in rule 2(c) of the aforesaid rules. The 1968 Order regarding Police-Patils is issued by Home Department. Order dated 14.11.2011 is also issued by Home Department. It meets the requirement of Rule 12 of the 1968 Order. The post of Police-Patil is otherwise also covered by definition of service as per Rule 2(c) of MCS (Declaration of Small Family) Rules, 2005. Reading this Rule 2(c) harmoniously with Rule 12 of 1968 Order, it is clear that the Police-Patil is governed by MCS (Declaration of Small Family) Rules, 2005. The Respondent No.1 cannot be faulted for holding the Applicant unfit for renewal of her appointment after expiry of her 5 years tenure on 31.7.2014 as she does not fulfill the requirement of the abovementioned rules. However, the appointment of the Applicant for the period 1.8.2009 to



31.7.2014 cannot be cancelled after she has already completed her tenure.

7. Having regard to the aforesaid facts and circumstances of the case, this OA is dismissed with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman
4.5.2016

Date : 4th May, 2016

Dictation taken by: S.G. Jawalkar.

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